

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JUDITH TRACKWELL,)	
)	
Plaintiff,)	4:05CV3171
)	
v.)	
)	
B & J PARTNERSHIP, CLAY F.)	MEMORANDUM AND ORDER
SMITH, WILLIAM D. SMITH, A.)	
JOYCE SMITH, CAPITOL TITLE,)	
HOMESERVICES OF NEBRASKA,)	
CHICAGO TITLE, HOME REAL)	
ESTATE, HOME SERVICES OF)	
AMERICA, F. WARD HOPPE, SUSAN)	
LADUKE, JAMES LAMPHERE,)	
ROBERT MOLINE, MICHAEL)	
TAVLIN, and WOODS BROTHERS)	
REALTY,)	
)	
Defendants.)	
)	

This matter is before the court *sua sponte*. When plaintiff was proceeding *pro se*, I granted her motion for leave to file a third amended complaint, the proposed complaint attached to the motion for leave to amend. Filing 115. Since that order was entered, plaintiff has hired new counsel and that attorney has entered an appearance on plaintiff's behalf. Filing 117. On the same day as the filing of that appearance a third amended complaint was filed. Filing 118. The third amended complaint is not signed by plaintiff's new counsel. In addition, the third amended complaint names only B & J Partnership as a defendant. The notice of entry of appearance, however, names B & J Partnership, LTD., Clay F. Smith, William D. Smith, A. Joyce Smith, and Michael Tavlin as defendants. Michael Tavlin has not been named before as a defendant, and the court's order granting Judith Trackwell's motion for leave to file amended complaint did not authorize the adding of any parties.

These discrepancies and developments cause me to conclude that the court should either (a) strike the Third Amended Complaint, and permit plaintiff to file yet another motion for leave to file a Fourth Amended Complaint, by new counsel, attaching a proposed Fourth Amended Complaint; or (b) require plaintiff's new counsel to sign the Third Amended Complaint. If the Third Amended Complaint, filing 118, is stricken, the extant complaint would (again) be plaintiff's Amended Complaint, Filing 8. Plaintiff's motion for leave should explain the changes from that pleading that are proposed to be made in the Fourth Amended Complaint.

IT THEREFORE HEREBY IS ORDERED,

Plaintiff is given ten days to either (a) file a motion for leave to file Fourth Amended Complaint in accordance with this memorandum and order; OR (b) file a copy of the Third Amended Complaint signed by plaintiff's new counsel. In the absence of either of these actions, the Third Amended Complaint will be stricken, and the operable complaint will be the Amended Complaint, filing 8.

DATED this 26th day of September, 2006.

BY THE COURT:

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge